IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6960 OF 2003

SOU. TAHSINBANO SHAIKH ... PETITIONER

Versus

SMT. JOHARABAI DASTAGIR GOLANDAJ.. RESPONDENT

WITH

WRIT PETITON NO. 6975 OF 2003

SOU. TAHSINBANO SHAIKH ... PETITIONER

Versus

SMT. ROSHANBI MEHBOOBSAB BAGWAN.. RESPONDENT

WITH

WRIT PETITON NO. 6980 OF 2003

SOU. TAHSINBANO SHAIKH ... PETITIONER

Versus

SMT. PUSHPA RAMLOO SHEGURE .. RESPONDENT

Mr. P. M. Shah for petitioner

Mr. S. S. Shah for respondent in WP 6960/03

CORAM:-SMT. RANJANA DESAI, J.

DATED:-26-4-2005

P.C.

1. These three writ petitions can be disposed of by a common order because they involve same issues. The petitioner in all these petitions is the original plaintiff landlady. The respondents are the original defendants. They are the tenants. For convenience the parties are referred to in this judgment as per their status in the suit.
2. The plaintiff is the owner of building No. 3 in M. H. No. 128-A, situate at Siddheshwar Peth, Solapur ("the suit property" for short). According to the plaintiff the defendants are the tenants of the suit property. They occupy different rooms in the suit property. The plaintiff filed three suits in the court of Civil Judge, Senior Division, Solapur for recovery of possession under the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act" for short) against the defendants inter alia on the ground of arrears of rent, bonafide and

reasonable requirement, disclaimer and carrying out permanent construction without the permission of the landlady. Writ Petition No. 6960 of 2003 arises out of R C S No. 531 of 2001, Writ Petition No. 6975 of 2003 arises out of R C S Suit No. 530 of 2001 and Writ Petition No. 6980 of 2003 arises out of R C S No. 532 of 2001.

3. In the said suits the trial court framed following additional issues;

(a) Whether this court has jurisdiction to entertain the present suit?

(b) Whether plaintiff proves that there is relation of landlord tenant between the plaintiff and defendant?

4.The defendants filed applications praying that the additional issues regarding jurisdiction be decided as preliminary issues. By the impugned orders the trial court allowed the said applications. Hence the plaintiff has filed these writ petitions.

5.The trial court placed reliance on judgments of this court in **Meher Singh v. Deepak Sawhny & Anr.**, **1998 (3) Mh. L.J. 940** and **Sudesh w/o Sushilkumar Handa v. Abdul Aziz s/o Umarbhai & Anr.**, **2001 (1) Mh. L.J. 324.** The trial court quoted the observations of this court that even if the question of jurisdiction is a mixed question of law and fact, it is required

to be decided first and the parties are entitled to lead evidence, oral as well as documentary. In view of this after allowing the applications the matters were kept for deciding additional issue of jurisdiction as a preliminary issue. The said orders are challenged in these three writ petitions.

6. I have heard at length Mr. Padmakant Shah, learned counsel appearing for the petitioner. He contended that it was wrong on the part of the trial court to allow the applications and direct framing of additional issues. Placing reliance on the decision of this court in **Smt. Laxmibai Narayan Satesa v. Dattatraya Tukaram Jarande, AIR 1983 BOMBAY 289**, the learned counsel contended that the jurisdiction of court to entertain a suit must be determined only from averments in the plaint and not on the basis of defences taken up in the written statement or on the issues raised and it is only the court in which the suit has been filed which has the jurisdiction to determine the same. He submitted that the plaint in the instant case clearly indicates that there is a relationship of landlord and tenant between the parties and hence the trial court has jurisdiction to entertain the suit. It was, therefore, wrong on the part of the trial court to direct hearing of issue of jurisdiction as a preliminary issue.

7. The learned counsel then relied on **Usha Sales Ltd. v. Malcolm Gomes & Ors**., **AIR 1984 BOMBAY, 60** and contended that under Order 14 Rule 2

of the Code of Civil Procedure ("Code" for short) a duty is cast upon the court that it must proceed to hear all the issues and pronounce judgment on the same. He contended that, however, there is a discretion in the court to try an issue as a preliminary issue. The learned counsel contended that the discretion has been wrongly exercised by the trial court and hence the impugned orders deserve to be set aside.

8. Mr. Surel Shah, learned counsel appearing for the respondents on the other hand placed reliance on the judgment of this court in **Shakuntala Balwant Gadgil v. Shubhada Suhas Kulkarni, 1985 Mh. L. J. 77** and contended that the court always has a jurisdiction to treat any particular issue as a preliminary issue. In this case the court has exercised its jurisdiction rightly and hence no interference is necessary with the impugned orders.

9. In my opinion, the judgment in **Meher Singh's case (supra**) would not be applicable to this case because there the court was considering Section 9A of the Code. We are not concerned here with Section 9A.

10. It is pertinent to note that in the written statement filed by the defendants the defendants have contended that the suit premises are owned by the Government and as such Rent Act would not be applicable to this case. The defendants have also denied the relationship of landlord and tenant.

11.To understand the submissions of the learned counsel, it is necessary to refer to Order 14 Rule 1 & 2 of the Code. They reads thus;

"1. **Framing issues**:-(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) Issues of fact,

(b) Issues of law.

(5)At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and (after examination under rule 2 of Order X and after hearing the parties or their pleaders), ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6)Nothing in this rule requires the Court to frame and record issues

where the defendant at the first hearing of the suit makes no defence.

2. **Court to pronounce judgment on all issues:-** (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to;

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

12.Therefore, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Issues can be of fact or of law. Ordinarily the court has to pronounce judgment on all issues even though a case may be disposed of on a preliminary issue. A discretion,

however, vests in a court to try an issue of law which relates to the jurisdiction of the court or to a bar to the suit created by any law for the time being in force, if the court is of opinion, that the case or any part thereof may be disposed of on the determination of that issue.

13.It is true that while deciding the question of jurisdiction the court has to look into the averments made in the plaint. Under Section 9A it is mandatory for a court to decide issue regarding jurisdiction as a preliminary issue, if objection to jurisdiction is taken at the hearing of an interim application. But it is not mandatory for the court to do so under Order 14 Rule 2 of the Code. Under Order 14 Rule 2, the court will have a discretion to try an issue of law as a preliminary issue, if the suit itself is likely to end thereby.

14.In this connection it would be advantageous to refer to **Shakuntala's case (supra)**. In that case the defendant was the plaintiff's tenant. The plaintiff terminated the defendant's tenancy by a notice. The defendant failed to vacate the suit premises hence the plaintiff filed a suit for possession. The defendant in his written statement contended that the Rent Act did not apply to the suit premises. The plaintiff made an application to the trial court contending that the issue regarding jurisdiction of the court should be tried as a preliminary issue. The trial

court dismissed the application. That order was challenged in this court. While setting aside the trial court's order, this court observed that the Court always has jurisdiction to treat any particular issue as a preliminary issue if the court is satisfied that the trial of the suit itself would be obviated, in case the finding on the issue goes to the root of the Court's decision to grant any relief to the plaintiff. Following are the material observations of this court.

> "The Court always has jurisdiction to treat any particular issue as a preliminary issue, if the court is satisfied that the trial of the suit itself would be obviated, in case the finding on the issue goes to the root of the Court's decision to grant any relief to the plaintiff. The finding on the issue in question was bound to decide the fate of the suit in one way or the other and if tried would result in quick disposal of the suit. The issue when decided was bound to decide the controversy to a large extent. The trial Judge was, therefore, in error in not allowing the application for trying the issue regarding jurisdiction as a preliminary one. If Evidence is required to be led, parties could be permitted to lead such evidence."

15. In **Usha Sales Ltd.'s case (supra)** the court was considering whether under Order 14 Rule 2 of the Code it is obligatory upon a court to decide

the issues relating to the jurisdiction of the Court or bar to the suit created by any law for the time being in force as preliminary issue before the settlement of other issues or trial of the entire case as a whole. This court held;

> "After the amendment in 1976 there is an obligation cast upon the Court that even though a case may be disposed of on a preliminary issue the Courts shall subject to the provision of sub-r. (2) pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue, if that decision disposes of the case or part of the case is no longer there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.
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> There is, however, a small exception carved out to the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in O. 14 R. 2 (2). The words "it may try" are clearly

indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue."

16.Therefore, in the instant case, if the court in its discretion has decided to take up additional issue of jurisdiction as a preliminary issue, the exercise of discretion cannot be called improper.

17.In **Smt. Laxmibai's case (supra),** the plaintiff had filed a suit in the City Civil Court for eviction of the defendant from the suit premises and possession thereof on the basis that the defendant was his licensee under the Leave and Licence Agreement. The City Civil Court framed issues inter alia whether the defendant was a licensee of the plaintiff and whether the plaintiff was entitled to possession of the suit premises. Both the issues were answered in the affirmative and the suit was decreed.

18.The learned Single Judge of this court hearing the appeal carried from this judgment held that in view of the issue of sub-tenancy arising on the pleadings, the City Civil Court has no jurisdiction to try the suit. According to him the issue of sub-tenancy ought to have been raised as it was specifically pleaded in the written statement and arising on the pleadings and if the same were raised, the City Civil Court would not have had jurisdiction

to record a finding on that issue and the dispute between the parties could not be ended without deciding that issue which could be only tried by the Small Causes Court under the Rent Act. While deciding this question in the Letters Patent Appeal filed against this judgment, the Division Bench of this court relying on a Full Bench Judgment of this court in **Dattatray v. Jayram, 66 B L R 645**, held that the jurisdiction of the court to entertain the suit is to be ascertained from the averments in the plaint and not on the basis of defences raised in the written statement.

19.In my opinion, this judgment is not applicable to the present case because there the court was not specifically dealing with Order 14 Rule 1 and 2. Besides even in the Full Bench decision on which reliance is placed in **Smt. Laxmibai's case (supra)**, it is held that in order to determine which court has jurisdiction to try a suit, the court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. It is further clarified by this court that, if a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant the continuance of the suit in the Special Court will depend on the decision of the court on that issue. Therefore, if the defendant subsequently raises a dispute, the court will have to decide that issue. The court may then try it as a preliminary issue or it may try it along with the

other issues

20. In view of the above, the trial court's orders directing that additional issues of jurisdiction be heard as preliminary issues do not call for any interference. Writ Petitions are rejected. Interim relief, if any is vacated. Suits to proceed.

21. Parties to act on authenticated copy of this order.

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